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October 20, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135,
WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45,
WC Docket No. 03-109
Written Ex Parte Communication**

Dear Ms. Dortch:

BEK Communications Cooperative ("BEK") is a rural telecommunications, video and broadband provider that serves its cooperative members that are located throughout six counties in South Central North Dakota. BEK was a pioneer in the deployment of fiber to the home in the rural landscape, beginning in early 2003, and has been consistently deploying such technology with the project expected to be completed in 2012. The last phase of this deployment began with a Rural Utilities Service ("RUS") loan application in 2009 and approval, the engineering design and approval, RUS-515 contract approvals, archeological study and approval, environmental study and approval and contract bidding which is complete. The project materials totaling over \$5 million have been committed — either already delivered or expected to be delivered in January. The two and a half year process is quickly closing in on completion in 2012, with the company having committed nearly \$15 million to date, with the expectation of some form of continuity in universal service fund ("USF") funding mechanisms for rural LECs.

BEK is extremely concerned, however, that proposed changes to USF which would cap the amount of reimbursable capital expenditures and operating expenses that have already been undertaken, or that have been committed to before the effective date of the pending order, will prohibit the company from recovering the \$15 million dollars of assets, engineering, construction and fiber that the cooperative is allowed to recover under current FCC rules.

To ensure that BEK and similarly situated companies are not harmed by the imposition of such a "capex and opex" cap, BEK strongly urges the Commission to allow for an expedited waiver process with a timeline for action by the Commission if such a cap is imposed. Such a waiver process has already been contemplated in the USF-ICC NPRM¹ in the context of study area

¹ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified*

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waivers. Under this process, upon receipt of the petition, a public notice would be issued seeking comment on the petition with a 30 day comment and a 45 day reply comment period.² The petition would then be deemed granted 60 days after the reply comment deadline absent any further action by the Wireline Competition Bureau.³

If the Commission proceeds with the imposition of a capex and opex cap without such an expedited waiver process, there is no assurance that waiver requests will be acted upon in a timely manner. Indeed, the record is replete with examples of waivers requests which involve significant amounts of USF funds languishing for years.⁴ Carriers such as BEK that have made investments and commitments based upon FCC rules that were in existence when the investments and commitments were made should be able to obtain a prompt determination from the Commission as to whether or not a capex and opex cap should be applied and not harmed by extended delay of such a critical decision.

If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



Derrick Bulawa

cc: Chairman Genachowski
Commissioner Michael Copps
Commissioner Mignon Clyburn
Commissioner Robert McDowell
Zac Katz
Margaret McCarthy
Angela Kronenberg
Christine Kurth
Sharon Gillett
Carol Mattey
Patrick Halley
Trent Harkrader
Amy Bender

Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, and Lifeline and Link-Up, WC Dockets No. 10-90 et al., FCC 11-13 (rel. Feb. 9, 2011); 76 Fed. Reg. 11632-11663 (2011) ("USF-ICC NPRM").

² *Id.* at para. 220.

³ *Id.*

⁴ Many times carriers have to make *ex parte* presentations to seek to expedite the process. *See, e.g.*, Letter from John Kuykendall, Director – Regulatory, John Staurulakis, Inc. to Marlene H. Dortch, Secretary, FCC on behalf of Northeast Iowa Telephone Company, CC Docket No. 96-45 filed Jan. 13, 2009 (seeking expedited treatment of a waiver petition filed a year earlier showing that the amount of lost funding absent the grant of the petition was estimated to be \$12,000 per month).